

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**ASHFORD  
COMMUNITY HOSPITAL**

**PRESBYTERIAN** | **CASE NO. 12-CA-165682**

**and**

**FEDERACIÓN PUERTORRIQUEÑA DE  
TRABAJADORES (FPT)**

**EXCEPTIONS ON BEHALF OF RESPONDENT ASHFORD  
PRESBYTERIAN COMMUNITY HOSPITAL, INC.**

In accordance with § 102.46 of the Rules and Regulations of the National Labor Relations Board, as amended, 29 CFR § 102.46, the undersigned attorney appears on behalf of Ashford Presbyterian Community Hospital (“the Hospital”); and files these exceptions to the decision of the Administrative Law Judge (“ALJ”), dated April 6, 2017.

The Hospital’s exceptions are directed both generally to the entire decision of the ALJ and specifically to his findings, conclusions and recommendations, detailed below, relating to the alleged violations by Respondent of §§ 8(a)(5) and (1) and 8(d) of the National Labor Relations Act (“the Act”).

Respondent’s exceptions are as follows:

1. The ALJ erred in declining to rely on a more accurate translation of Jt. Exh. 25(b), submitted as an Exhibit to the Respondent’s Post-Trial Brief, where the General Counsel

did not oppose inclusion of the Exhibit in the record. *Decision*, at 4, n. 6. (See General Counsel's Motion to Strike filed March 28, 2017; and Opposition to Motion to Strike filed April 4, 2017).

2. The ALJ erred in failing to consider that in 2010, the parties bargained and agreed to language that would allow the employer to request the exemption from the payment of the Christmas Bonus. *Decision* at 5, l. 20-46. (See Trial Transcript ("TT") at 109, l. 10-11; 115, l. 19-25; 116, l. 1-4).

3. The ALJ erred in failing to consider the undisputed evidence demonstrating Respondent, at least two months prior to notifying the Union that it had requested exemption from the payment of the Christmas Bonus, had evidenced its financial losses to the Union. *Decision*, at 6, l. 15-26. (See TT at 74, l. 1-4; 78, l. 4-21; 109.)

4. The ALJ erred in declining to take judicial notice of a publicly-available document released by the Department of Labor demonstrating the Respondent had been approved for an exemption from paying the 2015 Christmas Bonus. *Decision*, at 9-10, n. 8. (See General Counsel's Motion to Strike filed March 28, 2017; and Opposition to Motion to Strike filed April 4, 2017).

5. The ALJ erred in failing to consider Respondent's Human Resource Director, Ms. Carrillo, testified to not having received a phone call from the Union's President, or a request to meet and bargain, after notifying him the Respondent had requested exemption from payment of the 2015 Christmas Bonus. *Decision*, at 8, l. 21-22. (See TT at 119, l. 23-25; 120, l. 1; p. 121, l. 1-2; p. 142, l. 11-18).

6. The ALJ failed to make a determination of fact that the Union's proposal of payment of the Christmas Bonus in two parts was only in relation to the employees in Unit B; not Units A or C. *Decision*, at 11, l. 12-17. (See, TT at p. 110, l. 1-7).

7. The ALJ erred in finding that in December 2015, the Respondent did not attempt to bargain and/or did not bargain with the Union about its decision to not pay the Christmas Bonus, or the effects of that decision. *Decision, at 17, l. 36-37 and 1-8.* (See, General Record and Trial Transcript; TT at 122-123; 135-136).

8. The ALJ erred in finding, that although the Respondent's Collective Bargaining Agreements with the Union arguably permitted the Respondent to apply for an exemption from payment of the Christmas Bonus, Respondent was still obligated to bargain over the decision not to pay the bonus. *Decision, at 14, n. 10.* (See, JT Exhs. 5(b); 7(b); 9(b); 24, 25).

9. The ALJ erred in declining to follow the reasoning of Puerto Rico's Court of Appeals, as provided in *El Vocero de Puerto Rico v. Union de Periodistas de Artes Graficas y Ramas Anexas*, 2012 WL 4670000 (PR Ct. App. 2012). *Decision, at 14, n. 10.*

10. The ALJ erred in finding the Secretary of Puerto Rico's Department of Labor and Human Resources (PRDOL) had the authority to decide the exemption from payment of the 2015 Christmas Bonus was not applicable to union-represented employees. *Decision, at 15, n. 13.* (See Jt. Exh 24 and 25).

11. The ALJ erred in declining to consider the Secretary of the PRDOL's statements that the Collective Bargaining Agreements are the law between the parties and the Union's dispute about Christmas Bonuses for bargaining unit employees "would be a matter for arbitration" for which the Secretary lacks jurisdiction. *Decision at 15, n. 12.* (See, Jt Exh. 17(b); Jt. Exh. 23(b)).

12. The ALJ failed in determining the Respondent's sound an arguable basis defense fails, and that the nonpayment of the 2015 Christmas Bonus to employees in Units A and B was an unlawful contract modification in violation of Section 8(a)(5) and (1) of the National Labor

Relations Act. *Decision*, at 15, l. 23-28; at 16, l. 1-10. (See, General Record and Trial Transcript; TT at 122-123; 135-136).

13. The ALJ erred in equating the Respondent's decision to that taken by the employer in *Hospital Santa Rosa Inc.*, 365 NLRB No. 5, slip op.; and determining that even if the Secretary of the PRDOL had granted the Respondent an exemption from payment of the 2015 Christmas Bonus to union-represented employees, the employer is still obligated to bargain with the employees. *Decision*, at 17, l. 1-27. (See, General Record and Trial Transcript; TT at 122-123; 135-136).

14. The ALJ erred in applying the Board's decision in *Hospital Santa Rosa* retroactively to facts taking place in 2015. *Decision*, at 17, l. 27-34.

15. The ALJ erred in refusing to find the Union had waived its right to bargain over the issuance of a Christmas Bonus. *See Decision*, at 17, n. 14. (See, TT at 120-121; 63-64; 65, l. 3-8; 70, l. 2-4; 71, l. 1-8; 73, l. 7-15).

16. The ALJ erred in finding the Respondent presented the Union with a fait accompli through its December 1 letter notifying the Union of the request for exemption and inviting the Union to discuss the matter. *See Decision*, at 18. (See, TT at 118, l. 13-25; 122-123; 135-136; 144, l. 17-25; 145, l. 1-2).

17. The ALJ erred in finding the Hospital informed its employees of the request for an exemption from payment of the Bonus before informing the Union. *Decision*, at 7, l. 35-40. (See, TT at 33, l. 5-14; 52, l. 1-11; 113, l. 6-15).

18. The ALJ erred in refusing to find the parties bargaining to impasse over the issuance of the 2015 Christmas Bonus. *Decision*, at 18, n. 15. (See, TT, p. 110, l. 1-7).

19. The ALJ erred in extending beyond the authority granted to the Board by federal law, and engaging in the interpretation of the contract between the Union and the Hospital. *Decision, at 15, l. 23-29; 16, l. 1-10.* (See, JT Exhs. 5(b); 7(b); 9(b); 24, 25).

20. The ALJ erred in finding the Respondent unilaterally changed the terms and conditions of employment of its employees in Units A,B, and C when it did not pay the 2015 Christmas Bonus in violation of Section 8(a)(5) and (1) of the Act. *Decision, at 18, l. 33-36.* (See, JT Exhs. 5(b); 7(b); 9(b); 24, 25).

21. The ALJ erred in determining interest should be paid to compensate for not paying the 2015 Christmas Bonus to employees and erred in determining it should be compounded daily. *Decision, at 19, l. 15-18.* (See Jt. Exh 24 and 25).

22. The ALJ erred in ordering the Respondent shall compensate for adverse tax expenses when neither the General Counsel or the Charging Party requested this type of compensation. *Decision, at 19, l. 22-28.* (See, GC Exh. 12).

23. The ALJ erred in finding the Respondent could not argue against payment of the Christmas Bonus to non-union employees even when both the General Counsel and the Hospital questioned witnesses on this issue. *Decision, at 22, l. 21-29.* (See, TT at 114, l. 18-25; 115, l. 1-5).

24. The ALJ erred in deciding that the issue of whether employees that are no longer employed by the date of the alleged violation of the National Labor Relations Act have a right to the benefits of the Act and any Collective Bargaining Agreement is an issue of "Compliance Specification" and an argument for mitigating liability; and not an issue of liability. *Decision, at 20, l. 43-48; at 21-22.* (See Record, generally).

25. The ALJ erred in deciding that the issue of whether the Hospital's past practice of payment of a Christmas Bonus under Law 148 to individuals that are no longer employed at the date the Bonus is due is an issue of "Compliance Specification" and an argument for mitigating liability; and not an issue of liability. *Decision*, at 20, l. 43-48; at 21-22. (See, TT at 114, l. 13-25; 142, l. 1-10).

26. The ALJ erred in finding the Respondent did not plead its opposition to the compliance specification with "sufficient specificity." *Decision*, at 21, l. 45-48. (See, Record, generally; TT at 99, l. 17-24; GC Exh. 11; General Counsel's Motion for the Receipt of GC Exhibit 12 in Evidence and Close the Record).

27. The ALJ erred in finding that the payment of an annual Christmas Bonus based on an obligation existing under Puerto Rico law requires notice and the opportunity to bargain prior to discontinuation of the bonus. *Decision*, at 17, l. 1-23. (See Record, generally).

In light of the above, we respectfully request that this Complaint and Compliance Specification be dismissed in its entirety.

RESPECTFULLY SUBMITTED,

On May 31, 2017

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Angel Muñoz-Noya



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Amanda Collazo Maguire

#### CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2017, a true and correct copy of this Brief was filed with the National Labor Relations Board via its electronic system and was served by electronic mail on José Añeses, at [janesespena@gmail.com](mailto:janesespena@gmail.com), the Regional Director Margaret Diaz at

[Margaret.diaz@nrb.gov](mailto:Margaret.diaz@nrb.gov), and Counsel for the General Counsel Manijée Ashrafi Negroni at [Manijee.ashrafi-negroni@nrb.gov](mailto:Manijee.ashrafi-negroni@nrb.gov)



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Amanda Collazo Maguire